interest due on the $2.5 million loan. Reifsteck Certif., Ex. 16; 4T at 186-187.

16. Nasir Shansab admitted that Tamim sent checks or wire transfers to Japan, but asserted that those payments were made simply to help his friends in Japan with their financial difficulties. 2T at 71-72.

17. Subsequently, Coast filed for protection under Chapter 11 of the Bankruptcy Code.

18. Neither Sugimoto nor any other of the principals of U.C.S. filed a claim in the bankruptcy proceedings. 2T at 131; 4T at 164-165.

19. In January, 1996, after learning that Coast had sought the protection of the Bankruptcy Court, Sugimoto dispatched Hayashi with a letter to be hand-delivered to Tamim Shansab. The letter was delivered to Nasir Shansab in Washington D.C. on January 12, 1996. Due to a severe snow storm on that date, Tamim Shansab was unable to meet Hayashi. 2T at 73-74.

20. Defendants produced an undated letter from Sugimoto to Tamim Shansab which they contend is the letter delivered by Hayashi on January 12, 1996. Def. Ex. D732. Tamim Shansab maintains that the undated letter is from 1991, when they were still considering the Metropolitan Motorcar acquisitions. 2T at 128.

21. The undated letter from Sugimoto specifically makes reference to the November 23, 1990 letter agreement and requests that Tamim Shansab re-confirm the

terms of that agreement. Specifically, the letter provides that the $2.5 million provided to Shansab by UCS constitutes a loan to be re-paid as described in the November 23, 1990 agreement. In addition, the letter includes a signature line for Shansab to re-confirm the terms as set forth. Def. Ex. D732.

22. By letter dated January 12, 1996, Nasir Shansab confirmed receipt of Sugimoto's letter and stated that "[s]ince the letter refers to a legal document drawn up by counsel, Tamim needs to submit it to his attorney before he can *sign* it." Def. Ex. D740 (emphasis added).

23. Also on January 12, 1996, Tamim Shansab sent Kayashi a letter at his hotel in Washington D.C. apologizing for his unavailability due to the weather and confirming that he had been briefed by his father as to Nasir's discussion with Kayashi. Tamim went on to state that "[i]n view of the difficulties Mr. Sugimoto faces, I agree with your suggestion to sell the business – although the present market conditions might not be favorable. I will try to realize a sale as soon as possible, without publically announcing our desire to sell for that could erode the value of the business." Def. Ex. D739.

24. In a letter dated February 27, 1996, Tamim Shansab sought to respond to Sugimoto's concerns. After providing Sugimoto with a lengthy recitation of Coast's problems with VCI and its economic difficulties, Shansab stated, "[w]hen we have moved beyond

the immediate difficulties, I am fully prepared to sit down with Mr. Hayashi, or with you, Daisuke and Mr. Utagawa, and discuss the details of our relationship. Please know in the meantime I will do everything I can to protect you." Def. Ex. D741.

25. In examining the subsequent correspondence, the Court finds that the undated letter was in fact the letter delivered by Hayashi to Nasir Shansab on January 12, 1996. Nasir Shansab's January 12, 1996 letter confirming its receipt demonstrates that the letter refers to a legal document and that it requests Tamim's signature. The first line of the undated letter provides, "Reference is made to the letter agreement dated November 23, 1990 that was executed among you, Mr. Daisuke Utagawa, U.C.S., Inc. and its shareholders including myself in relation to an acquisition of a Mercedes agency in the U.S.A." Def. Ex. D732. In addition, the undated letter also includes a signature line for Tamim Shansab's signature. Finally, considering the substance of the undated letter in sequence with the subsequent correspondence, the letter does not appear out of place chronologically as plaintiff argues.

26. Based upon the foregoing facts, the Court finds by clear and convincing evidence that the $2.5 million provided to Shansab by his Japanese friends was encumbered. Simple common sense dictates that Sugimoto would not incur $2.5 million in debt and simply give that money to Shansab, who he had known for little more than one year, with no strings

attached and no expectation of repayment. It is important to note that Sugimoto borrowed this money, he did not give Shansab $2.5 million in personal funds. The evidence supports this common sense view. First, the letter agreement signed by the parties on November 23, 1990, provides for Shansab to receive a loan of $2.5 million, not a gift. Second, Shansab apparently sent checks or wire transfers to Sugimoto in Japan. Finally, after Coast filed for bankruptcy protection, Sugimoto took the logical step of reaching out to Shansab in an effort to protect his interest and sought to re-confirm the terms of the loan pursuant to the November 23, 1990 agreement.

II. DISCUSSION AND CONCLUSIONS OF LAW

A. RES JUDICATA

A threshold issue for the Court's determination is whether the Appellate Division's decision dismissing the pending rescission claim in the Law Division action as moot requires this Court to dismiss the claim in this action.

"The doctrine of res judicata, or claim preclusion, rests on principles of judicial economy and fairness to litigants." *Oates v. City of Philadelphia*, Civ. No. 98-3329, 1999 WL 1045144, *4 (E.D. Pa. Nov. 17, 1999) (citation omitted). The purpose of the doctrine is to prevent piecemeal litigation of claims arising from the same events. *See Churchill v. Star Enters.*, 183 F.3d 184, 194 (3d Cir.1999). "Where two successive lawsuits seek recovery for the same injury, a judgment on the merits operates as a bar for a later suit, even though a different legal theory of recovery is advanced in the

second suit." *Oates*, 1999 WL 1045144 at *5 (citations and internal quotations omitted).

As to the preclusive effect of a prior state court judgment in federal court, the Full Faith and Credit Act, 28 U.S.C. § 1738,[3] provides that a federal court must accord a state court judgment the same effect as the courts of the state rendering the judgment. See *Matsushita Elec. Indus. Co., Ltd. v. Epstein*, 516 U.S. 367 (1996); *Gregory v. Chehi*, 843 F.2d 111, 116 (3d Cir. 1988); *Suarez v. Camden County Bd. of Chosen Freeholder*, 972 F.Supp. 269 (D.N.J. 1997). "When determining the judgment preclusion effect of a judgment rendered by a state court, we are referred to the law of the rendering the state." *Harris v. Pernsley*, 755 F.2d 338, 342 (3d Cir.), *cert. denied*, 474 U.S. 965 (1985). Therefore, the Court will employ New Jersey law to determine whether a New Jersey state court would conclude that the dismissal of VOA/AOA's rescission claim as moot by the Appellate Division bars consideration of the claim.

As with federal law, New Jersey law provides that res judicata shall apply where: (1) there is a valid, final judgment on the merits by a court of competent jurisdiction; (2) the parties in the subsequent action are identical or in privity with the parties in the prior action; (3) the claim in the sub-

---

3 28 U.S.C. § 1738 provides, in pertinent part:

> The...judicial proceedings of any court of any...State...shall have the same full faith and credit in every court within the United States and its Territories and Possession as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

sequent action arises out of the same transaction or occurrence as the claim in the earlier action. *See Watkins v. Resorts Int'l Hotel and Casino, Inc.*, 124 N.J. 398, 412 (1991); *Nolan v. First Colony Life Ins. Co.*, 345 N.J. Super. 142, 153 (App. Div. 2001).

The parties agree that the sole issue here is whether, under New Jersey law, the Appellate Division's dismissal of VOA/AOA's rescission claim as moot constitutes a final judgment on the merits. Upon examination of the case law, it is clear that a dismissal on grounds of mootness does not constitute a judgment on the merits in New Jersey courts. In *Transamerica Ins. Co. v. Nat'l Roofing Inc.*, the New Jersey Supreme Court held that "[a] dismissal for mootness by definition is not an adjudication on the merits...When a court dismisses a matter as moot, it has found there is nothing to adjudicate." 108 N.J. 59, 64 (1987); *accord Alan J. Cornblatt, P.A. v. Barow*, 153 N.J. 218, 243 (1998) (citing *Transamerica*). There is nothing in the record before the Court which would indicate that the merits of VOA/AOA's claim seeking rescission were considered in any manner by the state court prior to its dismissal, and thus, res judicata is inapplicable.

B. Defendant's Equitable Fraud Counterclaim

1. Liability-New Jersey Law of Equitable Fraud by Misrepresentation

A federal court sitting in diversity or exercising supplemental jurisdiction over state law claims must apply state law including the choice-of-law rules of the forum state, in this case, New Jersey. See *Klaxon Co. v. Stentor Electric*

Mfg. Co., 313 U.S. 487, 495 (1941); *LeJeune v. Bliss-Salem, Inc.*, 85 F.3d 1069, 1071 (3d Cir.1996) (citations omitted); *Fedorczyk v. Carribean Cruise Lines, Ltd.*, 82 F.3d 69, 73 (3d Cir.1996) (citations omitted); *General Ceramics Inc. v. Firemen's Fund Ins. Cos.*, 66 F.3d 647, 652 (3d Cir.1995) (citations omitted). While neither party expressly addresses which state's laws apply to the agreement between the parties but, rather, each appears to presume that New Jersey law applies. Thus, the Court will apply New Jersey law with respect to the defendants' equitable fraud counterclaim seeking rescission.

At the outset, the Court must address plaintiff's claim that, under New Jersey law, a franchise relationship may not be undone by a common law claim seeking rescission. Plaintiff argues that the New Jersey Franchise Practices Act (NJFPA), N.J. Stat. Ann. §§ 56:10-1 to 56:10-15, is the sole vehicle for the termination, cancellation or non-renewal of a franchise in New Jersey. Aside from the fact that plaintiff cites no authority for this proposition, the argument misses the point in this context. Defendants are seeking rescission of the franchise, not termination, cancellation or non-renewal of the franchise. Rescission based on equitable fraud in the formation of an agreement is not synonymous with cancellation, termination or non-renewal of the franchise, and thus, is not governed by those provisions of the NJFPA. See *First Hartford Corp. Pension Plan & Trust v. United States*, 194 F.3d 1279 1296 (Fed. Cir. 1999) *First American Title Ins. Co. v. Lawson*, 351 N.J. Super. 407, 422-23 (App.Div.2002) (noting that "rescission voids the contract *ab initio* [,]" whereas, "'[c]ancellation voids the policy prospectively but would not affect any claim asserted by an innocent third

party prior to cancellation.") (quoting *Progressive Cas. Ins. Co. v. Hanna*, 316 N.J. Super. 63, 71 n.10 (App.Div.1998)), *certif., granted,* 2002 WL 31342495 (N.J. Sep. 6, 2002). There is nothing in the NJFPA which governs rescission of a franchise agreement due to equitable fraud in the formation of the agreement. If plaintiff's argument were accepted, a franchisor would be without remedy against a franchisee who procures a dealership through fraudulent statements in the application so long as, upon receiving the franchise, the franchise continues "to substantially comply with those requirements imposed upon him by the franchise." N.J. Stat. Ann. § 56:10-5. It strains credulity to argue that the New Jersey Legislature intended such an inequitable result. Therefore, the Court concludes that defendants' common law equitable fraud counterclaim is not barred by operation of the NJFPA.

To prevail on a claim of equitable fraud defendants must prove by clear and convincing evidence: "(1) a material misrepresentation of a presently existing or past fact; (2) the maker's intent that the other party rely on it: and (3) detrimental reliance by the other party." *First American Title Ins. Co.*, 351 N.J. Super. At 418 (citing *Jewish Ctr. of Sussex County v. Whale*, 86 N.J. 619, 624-25 (1981); *Liebling v. Garden State Indem.*, 337 N.J. Super. 447, 453 (App.Div.), *certif. denied,* 169 N.J. 606 (2001)). "[U]nlike legal fraud which may give rise to money damages, equitable fraud does not require proof that the representations was made with 'knowledge of its falsity and an intention to obtain an undue advantage therefrom.'" *Daibo v. Kirsch*, 316 N.J. Super. 580, 588 (App. Div. 1998) (quoting *Jewish Ctr. of Sussex County,*

86 N.J. at 625); *accord Lighting Lube v. Witco Corp.*, 4 F.3d 1153, 1182-83 (3d Cir. 1993).

As stated, this Court finds that Tamim and Nasir Shansab misrepresented to VOA/AOA that the $2.5 million they received from their Japanese friends and intended to invest in Coast through TSE was completely unencumbered. There is little doubt that this fact was material to the approval of the franchise applications. Likewise, the very fact and nature of the application indicates that the Shansabs obviously intended that the defendants rely on the information provided and that the defendants did in fact rely on it.

Plaintiff argues, however, that the misrepresentations was immaterial and that defendants did not rely on it because no evidence was produced of other applicants for the franchises, and thus, the applications would have been granted regardless of the misstatement. This argument is unpersuasive. It is apparent that whether an applicants' funds to be invested in the franchise are encumbered is clearly material to the franchisor's decision on the application. To speculate years later as to whether the franchisor would have decided differently had the applicants been entirely truthful is clearly improper at this stage.

In addition, plaintiff appears to argue, relying on the deposition testimony of Cameron Eiseman, that because defendants' investigations failed to identify the false statements about the source of the Shansabs' financing when they were made, those statements must have been true. This argument lacks merit. The fact that defendants were satisfied with plaintiff's applications at the time they were submitted is of

no moment. New Jersey Courts have consistently held that the performance of an investigation in no way vitiates an applicant's obligation to respond truthfully on an application. *See First American Title Ins. Co.*, 351 N.J. Super. at 421-22; *Progressive Cas. Ins. Co.*, 316 N.J. Super. at 70; *see also New Castle County v. Hartford Accident & Indem. Co.*, 685 F.Supp. 1321 (D.Del. 1988), *rev'd in part on other grounds*, 933 F.2d 1162 (3d Cir. 1991).

While the elements of misrepresentations, materiality and reliance are clearly present here, defendants have failed to prove *detrimental* reliance. In other words, defendants have not demonstrated that plaintiff's misrepresentation regarding whether the funds were encumbered caused them to suffer damages.[4] It is undisputed that the money was in Shansab's account and available for, and was used, for investment in the dealership. While the Court has found that plaintiff misrepresented that the money was encumbered, there was no evidence presented that VOA/AOA suffered harm due to the encumbrance. Therefore, the Court concludes that defendants have failed to prove all the requisite elements of equitable fraud.

2. Remedy- New Jersey Law Regarding Rescission

Even if the Court were to conclude that defendants proved equitable fraud on the part of the plaintiff, rescission is not

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[4] Given the jury verdict in favor of defendants and Coast's sale of the franchise, it appears that defendants continue to seek rescission in an effort to collaterally attack the state court judgment compelling VOA/AOA to transfer the franchise to Aspen Knolls.

an appropriate remedy under the circumstances presented herein. Rescission is a remedy available under New Jersey law where one party to a contract commits fraud or misrepresents material facts during the formation of the contract. *See Merchants Indemnity Corp. v. Eggleston,* 37 N.J. 114, 130-31 (1962). "If a party to a contract is guilty of misrepresentation, the contract is voidable and the victim may rescind the contract." *Cooper v. Borough of Wenonah,* 977 F.Supp. 305, 313 (D.N.J. 1997) (citation omitted). As stated, rescission of the contract results in the "unmaking" of the parties' agreement from the beginning, rather than a mere termination. *See First Hartford Corp., Pension Plan & Trust,* 194 F.3d at 1296 (Fed. Cir. 1999). The decision to grant a remedy of rescission is discretionary, and is to be made only in extraordinary cases where general principles of equity call for it. *See id.* To grant rescission, the Court must ordinarily to be able to return the parties to their pre-contract positions. *See Intertech Assocs., Inc. v. City of Paterson,* 255 N.J. Super. 52, 59 (App. Div. 1992); *Baldasarre v. Butler,* 254 N.J. Super. 502, 524 (App. Div. 1992), *rev'd in part on other grounds,* 132 N.J. 278 (1993); *Hilton Hotels Corp. v. Piper Co.,* 214 N.J. Super. 328, 336 (Ch. Div. 1986) (citing *Driscoll v. Burlington-Bristol Bridge,* 28 N.J. Super. 1, 4 (App. Div. 1953)).

Here, the passage of time and the relationships of the parties have made return to the *status quo ante* and impossibility. More than ten years of a tumultuous franchisor-franchisee relationship have passed between Coast and VOA/AOA. During that time, Coast has filed for an emerged from bankruptcy proceedings, the parties have engaged in

litigation in federal court for at least five years and in state court for at least six years.

Most importantly, Coast has conveyed the franchises to an innocent third party and bonafide purchaser, Aspen Knolls. As recounted in more detail above, VOA/AOA brought a motion in the Law Division to enjoin Coast's sale of the Franchises to Aspen Knolls. The request for an injunction was denied and the Law Division ultimately held that VOA/AOA withheld approval of Aspen Knolls' applications in bad faith and ordered the transfer of the franchise. That determination was affirmed by the Appellate Division. Considering the circumstances, rescission of the franchise agreements would be impossible without nullifying various state court orders and causing substantial injury to an innocent third party. Such a result would be contrary to the principles of equity, and thus, the Court will not exercise its discretion to grant rescission.

Defendants argue that even if restoration of the *status quo* is impossible the Court may nevertheless exercise its equitable powers to fashion in appropriate remedy, particularly through the award of damages.[5] As stated, defendants have failed to prove any identifiable damages as a result of the misrepresentation. Moreover, it is well established under New Jersey law that "[i]n an action for equitable fraud, the only relief that may be obtained is equitable relief, such as rescission or reformation of an agreement and not monetary

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[5] The intervenor, Aspen Knolls, has also suggested an award of damages as an alternative to rescission, thereby not interfering with their purchase of the dealership.

damages." *Daibo,* 316 N.J. Super. at 591-92 (App. Div. 1998) (quoting *Enright v. Lubow,* 202 N.J. Super. 58, 72 (App. Div. 1985), *certif. denied,*104 N.J. 376 (1986)); *accord Lighting Lube v. Witco Corp.,* 4 F.3d 1153, 1182-83 (3d Cir. 1993). To obtain monetary damages on a fraud claim a party must assert legal fraud, which, as stated, requires proof of scienter. *Jewish Ctr. of Sussex Country,* 86 N.J. at 624-25. Here, defendants have asserted only equitable fraud and have not proven scienter. Thus, the award of monetary damages is inappropriate.

III. CONCLUSION

For the reasons discussed above, the Court hereby enters judgment on the defendants' equitable fraud counterclaim in favor of the plaintiff. An appropriate form of order is filed herewith.

GARRET E. BROWN, JR., U.S.D.J.

(3)

No. 04-1737

Supreme Court, U.S.
FILED
JUL 26 2005
OFFICE OF THE CLERK

In The

Supreme Court of the United States

COAST AUTOMOTIVE GROUP, LTD.,

Petitioner,

v.

VOLKSWAGEN CREDIT, INC., *ET AL.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

The Questions Presented by Petitioner, Coast Automotive Group, Ltd. ("Coast"), should be consolidated and restated as:

1. Whether the lower courts' interpretation of the unambiguous statutory defense provided to franchisors in the New Jersey Franchise Practices Act, N.J. Stat. Ann. 56:10-1, *et seq.* (West 2001) ("NJFPA") was reasonable in light of the statutory language and the policies pursued by the State Legislature in enacting the NJFPA.

2. Whether the decision of the Third Circuit Court of Appeals in favor of the franchisors on the NJFPA claim is inconsistent with the decision of the State Appellate Court in *VW Credit, Inc. v. Coast Automotive Group, et al.*, 787 A.2d 951 (N.J. Super. App. Div.), *cert. denied*, 796 A.2d 895 (N.J. 2002) whereby the court afforded Coast relief under the NJFPA during the pendency of parallel State Court proceedings.

3. Whether compelling reasons have been presented to the Court to justify the review of the sufficiency of the evidence supporting the jury verdicts on the State and Federal statutory claims.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Respondent Volkswagen of America, Inc. is a wholly-owned subsidiary of Volkswagen Beteiligungs-Gesellschaft m b h, a corporation organized and existing under the laws of Germany. This latter company is wholly-owned by Volkswagen AG, a German corporation.

Respondent Audi of America is an unincorporated division of Volkswagen of America, Inc.

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STATUTES INVOLVED

The following statutes are involved in the opposition to the Petition:

N.J. Stat. Ann. 56:10-7(e) (West 2001)

> It shall be a violation of this act for any franchisor, directly or indirectly, through any officer, agent or employee, to engage in any of the following practices: . . .
>
> e. To impose unreasonable standards of performance upon a franchisee.

N.J. Stat. Ann. 56:10-9 (West 2001)

> It shall be a defense for a franchisor, to any action brought under this act by a franchisee, if it be shown that said franchisee has failed to substantially comply with requirements imposed by the franchise and other agreements ancillary or collateral thereto.

15 U.S.C. §1221(e) (West 1998)

> As used in this Act [15 USCS §§1221 *et seq.*] . . .
>
> e. The term "good faith" shall mean the duty of each party to any franchise, and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: Provided, that recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to be constitute a lack of good faith.

15 U.S.C. §1222 (West 1998)

> Authorization of suits against manufacturers; amount of recovery; defenses.
>
> An automobile dealer may bring suit against any automobile manufacturer engaged in commerce, in any district court of the United States in the district in which said manufacturer resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover the damages by him sustained and the cost of suit by reason of the failure of said automobile manufacturer from and after the passage of this Act [enacted Aug. 8, 1956] to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer: Provided, that in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith.

STATEMENT OF THE CASE

This Petition arises out of an action by a new motor vehicle dealer, Coast Automotive Group, Ltd. ("Coast") against two of its motor vehicle franchisors, Volkswagen of America, Inc. ("VWoA") and Audi of America ("Audi"), and other defendants. Coast claimed that VWoA and Audi failed to provide sufficient new motor vehicles to it during the course of its bankruptcy proceedings in violation of the New Jersey Franchise Practices Act, N.J. Stat. Ann. 56:10-1, *et seq.* (West 2001) (the "NJFPA") and the Automobile Dealer's Day in Court Act, 15 U.S.C. §1221, *et seq.* (West 1998) (the "Dealer's Act"). A jury trial was conducted by

the Honorable Garrett E. Brown, Jr., U.S.D.J., on the claims by Coast against VWoA and Audi simultaneously with a bench trial on VWoA's and Audi's Counterclaim seeking rescission of Coast's Volkswagen and Audi dealer agreements. At the time of the trial, there were no unresolved claims against any other defendants. In any event, the claims against the other defendants were separate and distinct from the two statutory claims against VWoA and Audi.

The jury returned its verdict in favor of VWoA and Audi on both statutory causes of action. (Appendix to Petition for Writ of Certiorari ("Pet. App.") at 28a-31a.) In connection with the jury verdict in favor of VWoA and Audi on the claim under the NJFPA, the jury determined that although VWoA and Audi violated the Act in their allocation of vehicles to Coast, the respondents proved that Coast failed to substantially comply with the requirements of its franchise. (Pet. App. 30a, verdict sheet questions 5 and 6.) Jury verdict sheet question six was premised on the express language in N.J. Stat. Ann. 56:10-9 (West 2001) which provides a defense to franchisors to claims under the NJFPA where a franchisee fails to substantially comply with its franchise requirements. VWoA and Audi alleged that Coast failed to substantially comply with its franchise agreements in its failure to maintain the required financial accommodations for the purchase of its motor vehicle inventory and in the making of material misrepresentations by the dealer's owners in the applications to be awarded the franchises. (Pet. App. 14a.)

The jury verdict in favor of VWoA and Audi on the claim under the Dealer's Act was entered on the basis of Coast's failure to prove that VWoA's and Audi's "conduct was an attempt to coerce or intimidate plaintiff ("Coast")

into surrendering or selling its Volkswagen and Audi franchises." (Pet. App. 29a, Verdict Sheet Question 2.)

On October 30, 2002, the district court issued an Opinion on the bench portion of the trial. (Supplemental Appendix to Petition for Writ of Certiorari ("Supp. Pet. App.") at 1a-23a.) VWoA and Audi sought rescission of Coast's Dealer Agreements based on material misrepresentations made in the applications to be awarded the agreements in the first instance. The court found by "clear and convincing evidence" that the 2.5 Million Dollars provided to the dealer principal by his Japanese friends was "encumbered" and, thus, there were material misrepresentations made in the applications. (Supp. Pet. App. 13a-14a and 19a-20a). The dealer principals had represented in the applications that the monies to be used to purchase and capitalize Coast were personal (and unencumbered) funds. (Supp. Pet. App. 10a). Notwithstanding the existence of material misrepresentations, the District Court determined that VWoA and Audi were not entitled to rescind the Dealer Agreements due to the failure to prove detrimental reliance. (Supp. Pet. App. 20a). The bench opinion on the counterclaim was not the subject of the appeal to the Third Circuit or the within Petition.

VWoA and Audi rely upon the discussion of the particular facts in this case as stated by the Third Circuit in its Opinion (Pet. App. 7a-8a & 14a-16a) and the District Court Opinion relative to its decision on the Counterclaim. (Supp. Pet. App. 6a-14a.) The following is a brief summary of the facts pertinent to this Court's consideration of the Petition.

Coast had been an authorized retailer of new Volkswagen and Audi motor vehicles at its dealership facilities